

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made by and between the City of Santa Cruz (City) and the Central Coast Regional Water Quality Control Board (Central Coast Water Board). The City and the Central Coast Water Board are each described herein as "Party" and collectively as "Parties."

RECITALS

1. State Water Resources Control Board Order No. 99-08-DWQ establishes the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity (Permit).
2. On March 12, 2004, the City filed a Notice of Intent for the DeLaveaga Golf Course construction site (Site) with the State Water Resources Control Board, for permit coverage pursuant to the Permit.
3. Regional Board Administrative Civil Liability Order No. R3-2005-0067 (Order) finds that the City violated provisions of the Permit during construction activities at the Site, for which the Central Coast Water Board imposed total civil liability in the amount of \$130,500 pursuant to Section 13385 of the Water Code.
4. The Central Coast Water Board agrees to allow the City to fund the supplemental environmental project described below (Blue Trail Gully SEP) in lieu of paying part of the administrative civil liability amount, as set forth below. The Water Quality Enforcement Policy (at page 24) provides that administrative civil liability orders are final upon adoption and cannot be reconsidered by the Central Coast Water Board. Therefore, in order to effectuate this Settlement Agreement, the Parties will request the

State Water Resources Control Board to vacate the Order and remand it to the Central Coast Water Board for further consideration in accordance with this Settlement Agreement.

5. The City agrees to fund a portion of the approved supplemental environmental project and pay a sum certain as specified below to the Cleanup and Abatement Account for Central Coast Water Board staff costs. In the event that the City fails to fund a portion of the Blue Trail Gully SEP as specified herein, the City agrees that the Central Coast Water Board may enter the Stipulated Order in substantially the form attached as Exhibit A hereto. Exhibit A is incorporated into this Settlement Agreement by this reference.
6. The City represents that no law, permit or enforceable obligation requires it to complete the Blue Trail Gully SEP, other than this Settlement Agreement. The total estimated cost of the Blue Trail Gully SEP is \$375,000.
7. The Parties desire to settle all claims and disputes between them relating to the Order pursuant to the terms of this Settlement Agreement which has been negotiated in good faith.
8. The California Administrative Procedures Act in Government Code §11415.60 provides that an agency, including the Central Coast Water Board, may formulate and issue a decision by settlement, pursuant to an agreement of the parties, without conducting an adjudicative proceeding. Section 11415.60 also states that the settlement may not be contrary to statute or regulation, except the settlement may include sanctions the agency would otherwise lack power to impose. The Parties agree that the Central Coast Water Board has authority to enter this Settlement Agreement and issue the Stipulated Order as set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the terms, conditions and covenants set forth in this Settlement Agreement, and for other valuable consideration, receipt of which is hereby acknowledged, and intending to be bound by this Settlement Agreement, the City and the Central Coast Water Board agree as follows:

1. Recitals. Each of the Recitals set forth above is true and is hereby specifically incorporated into the Settlement Agreement.
2. City Payment. The City shall pay to the State Water Board's Cleanup and Abatement Account the Central Coast Water Board staff costs of Fifteen Thousand Six Hundred Seventy-Five Dollars (\$15,675). The warrant shall be made payable to the State Water Resources Control Board and delivered to the Central Coast Water Board office in San Luis Obispo, attention Chris Adair, within thirty (30) days after the effective date of this Settlement Agreement.
3. Supplemental Environmental Project.
 - a. The City shall pay One Hundred Fourteen Thousand, Eight Hundred and Twenty-Five Dollars (\$114,825) to the Santa Cruz Resource Conservation District (SCRCD) by warrant made payable to the SCRCD upon completion of the Blue Trail Gully SEP pursuant to the procedure set forth below. The funds will be used to pay for a portion of the Blue Trail Gully SEP which will be managed by the SCRCD. The City shall not be responsible for the implementation or completion of the SEP project; the City's sole obligation is to provide the SEP project funding upon its completion as provided for hereunder. The Blue Trail Gully SEP is briefly described below and is described more fully in the March 28, 2007 letter from the

SCRCD attached as Exhibit B hereto, which is incorporated by this reference, pursuant to the State Water Resources Control Board's Water Quality Enforcement Policy:

Blue Trail Gully Project – Arana Gulch Watershed

Arana Gulch is located within the unincorporated portion of Santa Cruz County and the eastern boundary of the City of Santa Cruz. It begins in the undeveloped hills above Chaminade Conference complex. Three steep-walled drainage systems, with sustained slopes of up to 70% occupy the northern portion of the watershed: the eastern branch, the central branch and the western branch. These branches have carved valleys in Purisima sandstone in the headwaters and come together upstream of the Oak Meadow Cemetery to form the main branch of Arana Gulch. The stream (Arana Gulch) flows through the watershed, the Santa Cruz Boat Harbor and on to the Monterey Bay. Large gullies have formed on the Chaminade Blue Hiking Trail (Blue Trail) located on the east branch of Arana Gulch in the rural upper portion of the watershed.

The gullies are contributing large amounts of sediment to the stream channel and have compromised the recharge area of a high-quality groundwater aquifer, City water line and Blue Trail in Arana Gulch. The Blue Trail Gullies are estimated to contribute 9,000 cubic yards of sediment per year into the system and are growing annually. This project will stabilize the hillslope, part of the Blue Trail, the City's water line, protect ground water aquifer storage, and will dramatically reduce sediment input through the reach. The Parties anticipate that the Blue Trail Gully project will be completed by December 31, 2008.

b. Within thirty (30) days after project completion, the City (or the SCRCD, on the City's behalf) shall provide the Central Coast Water Board a written certification of project completion and a post-project accounting. No later than fourteen (14) days after receipt of said written certification and final project accounting evidencing successful completion of the Blue Trail Gully SEP as described in Exhibit B hereto, the Executive Officer shall notify the City in writing that the Blue Trail Gully SEP has been satisfactorily completed. Within thirty (30) days thereafter the City shall make payment to the SCRCD; if the City's payment is less than \$114,825, the City shall remit the difference to the State Water Resources Control Board.

c. If the Executive Officer does not within the above-stated fourteen (14) day period either issue a written determination of successful project completion or a written

explanation stating all reasons why the Executive Officer denied said determination, the Blue Train Gully SEP shall be deemed satisfactorily completed. Within thirty (30) days thereafter the City shall make payment to the SCRCD; if the total project cost is less than \$114,825, the City shall remit the difference to the State Water Resources Control Board.

d. If, for whatever reason, the SCRCD does not satisfactorily complete the project by December 31, 2008, the Executive Officer of the Central Coast Water Board shall, at the Executive Officer's sole discretion, either extend the due date, approve an alternative supplemental environmental project with the City's written consent, or direct the City to pay \$114,825 to the State Water Board's Cleanup and Abatement Account. If the Executive Officer chooses to direct the City to pay \$114,825 to the Cleanup and Abatement Account, the City agrees to comply with such directive within thirty (30) days of receiving written notice.

e. Nothing in this Settlement Agreement or the Stipulated Order shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.

4. Conditions Precedent. This Settlement Agreement is expressly conditioned upon, and shall not become effective in whole or in part, until after all of the following have occurred:

- a. The City has duly approved and executed this Settlement Agreement;
- b. The State Water Resources Control Board has vacated the Order and remanded the matter to the Central Coast Water Board.
- c. The thirty (30) day period for public comment on the Settlement Agreement, required by the Clean Water Act and the State Water Resources Control Board's Water Quality Enforcement Policy, has expired; and

d. The Executive Officer of the Central Coast Water Board has approved and executed this Settlement Agreement.

5. City's Defenses to Enforcement. The City agrees that it has waived all defenses to Administrative Civil Liability Complaint No. R3-2005-0067, other than the issue (failure to consider Supplemental Environmental Projects) the City raised in its petition to the State Water Resources Control Board in OCC/SWRCB File No. A-1712. In any action to enforce this Settlement Agreement or the Stipulated Order, the City reserves its right to challenge a determination by the Executive Officer, the Water Board, or the State Water Resources Control Board that the City has not satisfactorily performed any requirement of this Settlement Agreement.

6. Publicity. Whenever the City publicizes the City's participation in the Blue Trail Gully SEP, it shall state in a prominent manner that the project is being funded in part through the settlement of an enforcement action against the City.

7. Issuance of Stipulated Order. If the Executive Officer determines that the City is in violation of any requirement of this Settlement Agreement, the Executive Officer shall notify the City in writing of the violation. If the City does not correct the violation within thirty (30) days thereafter, the Executive Officer may recommend to the Central Coast Water Board that the Board issue the Stipulated Order. The Central Coast Water Board may issue the Stipulated Order after holding any required hearing. If the City disagrees with the Executive Officer's determination of violation of this Settlement Agreement, the City and the Executive Officer shall try to resolve the dispute informally by holding at least one meeting or telephone conference; however, any informal dispute resolution process does not require the Executive Officer to delay placing the Stipulated Order on the Board's agenda for issuance. If the

Stipulated Order is issued, the City shall receive credit for all payments already made hereunder.

8. Release of City Liability. Upon the City's performance of its obligations under this Settlement Agreement, the City and its agents, employees and contractors shall be released and discharged from any and all liabilities and claims, whether known or unknown, relating to or arising from the Permit for violations or alleged violations that occurred on or before April 13, 2005.

9. Enforcement of Agreement and Reservation of Rights. If the City fails to make the payment required by Paragraph 2 or Paragraph 3 in accordance with the terms of this Settlement Agreement, the Central Coast Water Board Executive Officer may pursue enforcement of this Settlement Agreement or, if the Water Board issues the Stipulated Order, may enforce the Stipulated Order in accordance with the Porter-Cologne Water Quality Control Act (Cal. Wat. Code sect. 13000 et seq.). This Settlement Agreement relates only to the allegations in Administrative Civil Liability Complaint No. R3-2005-0067 and the findings in the Order. The Central Coast Water Board and its Executive Officer reserve all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders, for violations of the Permit that occurred after April 13, 2005.

10. Remand Request. The Parties hereby request the State Water Resources Control Board to vacate Administrative Civil Liability Order No. R3-2006-0067 and remand it to the Central Coast Water Board for further proceedings consistent with this Settlement Agreement.

11. Public Notice. The Water Board shall provide thirty (30) days' public notice of this Settlement Agreement.

12. Party Authorizations. Each Party represents and warrants to the other Party that the Party has taken, or has agreed to take, all action on its part necessary for the authorization, execution and delivery of the Settlement Agreement.

13. Successors. This Settlement Agreement shall be binding upon and for the benefit of the Parties released herein, as well as their respective successors, devisees, trustees, receivers, executors, representatives and assigns, and each of them.

14. Notice. If any Party to this Settlement Agreement is required to, or elects to, give written notice, he, she or it shall do so in the manner set forth in this paragraph. Any written notice shall be sent by both facsimile transmission and first-class mail to each of the following representatives of the Parties. Notice shall be deemed to be given on the date received by facsimile transmission, if such notice is given by facsimile transmission to all recipients between 8:00 a.m. and 5:00 p.m. on a non-holiday weekday. If notice is given by facsimile transmission after 5:00 p.m. on a weekday or on a weekend day or holiday, notice shall be deemed received on the next succeeding non-holiday weekday. The persons who are authorized to receive notice are as follows:

For City:

Dannettee Shoemaker
Santa Cruz Director of Parks and Recreation
323 Church Street
Santa Cruz, California 95060
Facsimile: (831) 423-5271

With a copy to:

John G. Barisone
Santa Cruz City Attorney
333 Church Street
Santa Cruz, CA 95060
Facsimile: (831) 423-9401

For Central Coast Regional Water Quality Control Board:

Roger W. Briggs
Executive Officer
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, California 93401
Facsimile: (805) 543-0397

With a copy to:

Lori T. Okun
Senior Staff Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812
Facsimile: (916) 341-5199

15. Effective Date. The Effective Date of this Settlement Agreement is the latest date on which either Party signs it.

16. Governing Law. This Settlement Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of California.

17. Counterparts. The Parties may execute and deliver this Settlement Agreement in any number of counterparts or copies, and each counterpart shall be deemed an original and taken together shall be considered to be the entire Settlement Agreement.

18. Entire Agreement. This Settlement Agreement constitutes the entire agreement of the Parties with respect to the matters stated herein, and may not be modified, amended or waived except in a written instrument duly executed by all Parties.

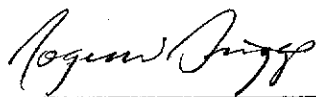
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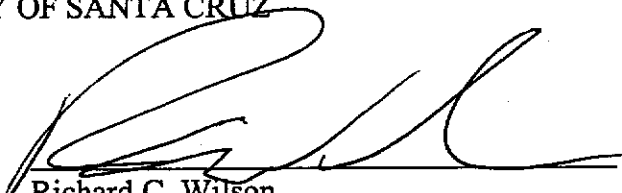
IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement
by their duly authorized representatives.

CENTRAL COAST REGIONAL WATER QUALITY
CONTROL BOARD

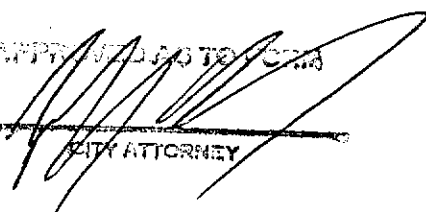
By: 
Roger W. Briggs
Executive Officer

Date Signed: 7-27-07

CITY OF SANTA CRUZ

By: 
Richard C. Wilson
City Manager

Date Signed: 7-23-07


CITY ATTORNEY